

Remarks

The specification and claims were amended in accordance with the amendments above. The amendments to the claims are being made merely to clarify the invention. All of the amendments are fully supported by the specification, claims, and figures as originally filed. No new matter is believed or intended to be involved.

Applicant appreciates the courtesies extended during the telephonic interview with the Examiner B. Nash on March 20, 2008. The claims were amended as discussed in the interview. While no agreements were reached, Applicant believes that the present amendments place the claims in condition for allowance, for at least the reasons set forth below.

Oath/Declaration

In the Office Action dated 01/24/2008, the Office stated that the oath/declaration was defective for using the phrase “material to examination” and referencing 37 CFR 1.56(a) instead of using the phrase “material to patentability” and referencing 37 CFR 1.56. The Office stated that a new oath/declaration was required. Pursuant to the waiver published in the Pre-OG Notice, dated January 22, 2008, Applicant submits that the language in the previously-filed Declaration for the present application, acknowledging the duty to disclose information that is “material to the examination of the application in accordance with §1.56(a),” is an acceptable substitute for the phrase “material to patentability as defined in §1.56” required by 37 CFR §1.63(b)(3). In other words, in accordance with the Pre-OG Notice, dated January 22, 2008, the inventors’ acknowledgment of the duty to disclose information that is “material to the examination of the application in accordance with §1.56(a)” sufficiently acknowledges the duty to disclose information that is “material to patentability as defined in §1.56.” Applicant therefore respectfully requests that the objection to the Declaration be withdrawn.

Specification

The disclosure was objected to for US serial numbers on page 1 of the specification being needing to be updated to reflect current status. In response thereto, Applicant has amended paragraph 1 to include updated patent numbers for those applications that have issued as patents, to correct an inadvertent typographical error in the serial number for the remaining pending

patent application, and to indicate the current status of the remaining pending patent application. Applicant therefore respectfully requests that the objection be withdrawn.

Double Patenting Rejections

Claims 1-6 and 10 were provisionally rejected on the grounds of nonstatutory double patenting over claims 1-20 of issued U.S. Patent No. 7,303,108 and claims 1-21 of U.S. Patent No. 7,038,075. Without admitting the propriety of the double patenting rejection, Applicant files herewith a terminal disclaimer, disclaiming the terminal part of the statutory term of any patent granted on the instant application that would extend beyond the expiration date of the full statutory term of any patent granted on U.S. Patents U.S. 7,303,108 and U.S. 7,038,075. Accordingly, Applicant submits that the double patenting rejection is obviated, and respectfully request that the rejection be withdrawn.

Claim Objections

Claim 10 has been objected to as being awkwardly phrased. In response, the term “is” has been deleted. Applicant believes the objection has thus been overcome and respectfully requests the objection be withdrawn.

§112 Rejections

Claims 2 and 3 were objected to under 35 USC §112 second paragraph as being indefinite. In particular, the Office indicated that there was insufficient antecedent basis for the term “said end effector” in claim 2. The Office further indicated that there was insufficient antecedent basis for the term “said firing member” in claims 2 and 3. Claim 2 has been amended to recite “the implement portion,” which is introduced in claim 1, in place of “said end effector.” Claim 2 has also been amended to properly introduce “a firing member.” Claim 3 has likewise been amended to properly introduce “a firing member.” Applicant submits that these amendments to claims 2 and 3 obviate the §112 rejections, and respectfully requests that the §112 rejections be withdrawn.

§102 Rejections

In the Office Action dated January 24, 2008, claims 1-6 and 10 were rejected under 35 U.S.C. §102(b) as being unpatentable over 5,762,255 to Chrisman et al. Under MPEP 2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. In addition, the elements in the prior art reference must be arranged as required by the claim. MPEP 2131 (emphasis added).

Applicant submits that Chrisman fails to teach or suggest all of the limitations recited in amended independent claim 1, particularly in the arrangement required by the claim. For instance, amended independent claim 1 recites “a lockout mechanism operably configured to lock the closing release mechanism when: (i) the implement portion is in the fully closed position, and (ii) the firing mechanism is in any position other than the unfired position.” Chrisman fails to teach or suggest such limitations, among others, particularly in the arrangement required by claim 1. Accordingly, Chrisman fails to anticipate claim 1 in accordance with MPEP 2131. Applicant therefore respectfully requests that the rejection be withdrawn.

Amended independent claim 10 recites “a lockout mechanism configured to lock the clamped implement portion in the fully closed position when the firing mechanism is in any position other than the unfired position.” Chrisman fails to teach or suggest such limitations, among others, particularly in the arrangement required by claim 10. Accordingly, Chrisman fails to anticipate claim 10 in accordance with MPEP 2131. Applicant therefore respectfully requests that the rejection be withdrawn.

Applicant further notes that the dependent claims include additional limitations not taught or suggested in the art of record, thus forming independent basis for novelty.

Conclusion

While several distinctions have been noted over the art of record, Applicant notes that there are several other limitations recited in the present claims which are neither taught nor suggested by the art of record. Applicant expressly reserves all rights and arguments with respect to distinctions not explicitly noted herein. In addition, to the extent that the amendments

constitute a narrowing of the claims, such narrowing of the claims should not be construed as an admission as to the merits of the prior rejections. Indeed, Applicant traverses the rejections and preserves all rights and arguments. To the extent that any particular statement or argument by the Office in the pending Office Action has not been explicitly addressed herein, the same should not be construed as an acquiescence or admission by the Applicant that such statements or arguments by the Office are accurate or proper.

Based on the foregoing, all pending claims are in a condition for allowance. Accordingly, Applicant respectfully requests reconsideration and an early notice of allowance. Should the Examiner wish to discuss the amendments or arguments made herein, Applicant invites the Examiner to contact the undersigned at (513) 651-6886 or via e-mail at kwales@fbtlaw.com

The Commissioner for Patents is hereby authorized to charge any deficiency or credit any overpayment of fees to Frost Brown Todd LLC Deposit Account No. 06-2226.

Respectfully Submitted,


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